

109TH CONGRESS
1ST SESSION

S. 375

To amend the Public Health Service Act to provide for an influenza vaccine awareness campaign, ensure a sufficient influenza vaccine supply, and prepare for an influenza pandemic or epidemic, to amend the Internal Revenue Code of 1986 to encourage vaccine production capacity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2005

Mr. BAYH (for himself, Mr. CRAIG, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Public Health Service Act to provide for an influenza vaccine awareness campaign, ensure a sufficient influenza vaccine supply, and prepare for an influenza pandemic or epidemic, to amend the Internal Revenue Code of 1986 to encourage vaccine production capacity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. Short title**

4 This Act may be cited as the “Flu Protection Act
5 of 2005”.

TITLE I—FLU VACCINE AWARENESS CAMPAIGN

SEC. 101. AWARENESS CAMPAIGN AND EDUCATION AND OUTREACH EFFORTS.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

“SEC. 399O. AWARENESS CAMPAIGN AND EDUCATION AND OUTREACH EFFORTS.

“(a) CAMPAIGN.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention (in this section referred to as the ‘Director’), shall conduct a public awareness campaign and education and outreach efforts each year during the time period preceding the influenza season on each of the following:

“(1) The importance of receiving the influenza vaccine.

“(2) Which populations the Director recommends to receive the influenza vaccine to prevent health complications associated with influenza, including health care workers and household contacts.

“(3) Professional medical education of physicians, nurses, pharmacists, and other health care providers and such providers’ associated organizations.

1 “(4) Information that emphasizes the safety
2 and benefit of recommended vaccines for the public
3 good.

4 “(b) OUTREACH TO MEDICARE RECIPIENTS.—

5 “(1) IN GENERAL.—The Administrator of the
6 Centers for Medicare & Medicaid Services shall, at
7 the earliest possible time in the influenza vaccine
8 planning and production process, reach out to pro-
9 viders of medicare services, including managed care
10 providers, nursing homes, hospitals, and physician
11 offices to urge early and full preordering of the in-
12 fluenza vaccine so that production levels can accom-
13 modate the needs for the influenza vaccine.

14 “(2) RATES OF IMMUNIZATION AMONG MEDI-
15 CARE RECIPIENTS.—The Director shall work with
16 the Administrator of the Centers for Medicare &
17 Medicaid Services to publish the rates of influenza
18 immunization among individuals receiving assistance
19 under the medicare program under title XVIII of the
20 Social Security Act (42 U.S.C. 1395 et seq.).

21 “(c) STATE AND PUBLIC HEALTH ADULT IMMUNIZA-
22 TION ACTIVITIES.—The Director shall support the devel-
23 opment of State adult immunization programs that place
24 emphasis on improving influenza vaccine delivery to high-

1 risk populations and the general population, including the
 2 exploration of improving access to the influenza vaccine.

3 “(d) EFFICACY OF VACCINE.—The Director shall
 4 work with appropriate agencies in conducting a study to
 5 assess the efficacy of the influenza vaccine.

6 “(e) EXISTING MODES OF COMMUNICATION.—In car-
 7 rying out the public awareness campaign and education
 8 and outreach efforts under subsections (a) and (b), the
 9 Director may use existing websites or structures for com-
 10 munication.

11 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
 12 are authorized to be appropriated to carry out this section
 13 \$10,000,000 for each of fiscal years 2005 through 2009.”.

14 **TITLE II—ENCOURAGING VAC-** 15 **CINE PRODUCTION CAPACITY**

16 **SEC. 201. INCENTIVES FOR THE CONSTRUCTION OF VAC-** 17 **CINE MANUFACTURING FACILITIES.**

18 (a) VACCINE MANUFACTURING FACILITIES INVEST-
 19 MENT TAX CREDIT.—

20 (1) ALLOWANCE OF CREDIT.—Section 46 of the
 21 Internal Revenue Code of 1986 (relating to amount
 22 of investment credit) is amended by striking “and”
 23 at the end of paragraph (1), by striking the period
 24 at the end of paragraph (2) and inserting “, and”,

1 and by adding at the end the following new para-
 2 graph:

3 “(3) the vaccine manufacturing facilities invest-
 4 ment credit.”.

5 (2) AMOUNT OF CREDIT.—Subpart E of part
 6 IV of subchapter A of chapter 1 of such Code (relat-
 7 ing to rules for computing investment credit) is
 8 amended by inserting after section 48 the following
 9 new section:

10 **“SEC. 48A. VACCINE MANUFACTURING FACILITIES CREDIT.**

11 “(a) IN GENERAL.—For purposes of section 46, the
 12 vaccine manufacturing facilities investment credit for any
 13 taxable year is an amount equal to 20 percent of the quali-
 14 fied investment for such taxable year.

15 “(b) QUALIFIED INVESTMENT.—

16 “(1) IN GENERAL.—For purposes of subsection
 17 (a), the qualified investment for any taxable year is
 18 the basis of each vaccine manufacturing facilities
 19 property placed in service by the taxpayer during
 20 such taxable year.

21 “(2) VACCINE MANUFACTURING FACILITIES
 22 PROPERTY.—For purposes of this section, the term
 23 ‘vaccine manufacturing facilities property’ means
 24 real and tangible personal property—

1 “(A)(i) the original use of which com-
2 mences with the taxpayer, or

3 “(ii) which is acquired through purchase
4 (as defined by section 179(d)(2)),

5 “(B) which is depreciable under section
6 167,

7 “(C) which is used for the manufacture,
8 distribution, or research and development of
9 vaccines, and

10 “(D) which is in compliance with any
11 standards and regulations which are promul-
12 gated by the Food and Drug Administration,
13 the Occupational Safety and Health Adminis-
14 tration, or the Environmental Protection Agen-
15 cy and which are applicable to such property.

16 “(c) CERTAIN PROGRESS EXPENDITURE RULES
17 MADE APPLICABLE.—Rules similar to rules of subsections
18 (c)(4) and (d) of section 46 (as in effect on the day before
19 the date of the enactment of the Revenue Reconciliation
20 Act of 1990) shall apply for purposes of this subsection.

21 “(d) TERMINATION.—This subsection shall not apply
22 to any property placed in service after December 31,
23 2009.”.

24 (b) TECHNICAL AMENDMENTS.—

1 (1) Clause (iii) of section 49(a)(1)(C) of such
2 Code is amended to read as follows:

3 “(iii) the basis of any vaccine manu-
4 facturing facilities property.”.

5 (2) Subparagraph (E) of section 50(a)(2) of
6 such Code is amended by inserting “or 48A(c)” be-
7 fore the period.

8 (3) The table of sections for subpart E of part
9 IV of subchapter A of chapter 1 of such Code is
10 amended by inserting after the item relating to sec-
11 tion 48 the following:

“Sec. 48A. Vaccine manufacturing facilities credit.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to property placed in service after
14 December 31, 2004, under rules similar to the rules of
15 section 48(m) of the Internal Revenue Code of 1986 (as
16 in effect on the day before the date of enactment of the
17 Revenue Reconciliation Act of 1990).

18 **TITLE III—ENSURING SUFFI-**
19 **CIENT FLU VACCINE SUPPLY**

20 **SEC. 301. VACCINE SUPPLY.**

21 Title XXI of the Public Health Service Act (42
22 U.S.C. 300aa–1 et seq.) is amended by adding at the end
23 the following:

1 “Subtitle 3—Influenza Vaccine

2 “VACCINE SUPPLY

3 “SEC. 2141. (a) REQUESTS FOR MORE DOSES.—

4 “(1) IN GENERAL.—Not later than March 15 of
5 each year, the Secretary shall enter into contracts
6 with manufacturers to produce such additional doses
7 of the influenza vaccine as determined necessary by
8 the Secretary.

9 “(2) CONTENT OF CONTRACT.—A contract for
10 additional doses shall provide that the manufacturer
11 will be compensated by the Secretary at an equitable
12 rate negotiated by the Secretary and the manufac-
13 turer for any doses that—

14 “(A) were not sold by the manufacturer
15 through routine market mechanisms at the end
16 of the influenza season for that year; and

17 “(B) were requested by the Secretary to be
18 produced by such manufacturer.

19 “(3) WHEN SUCH VACCINE PURCHASES
20 SHOULD TAKE PLACE.—The Secretary may purchase
21 from the manufacturer the doses for which it has
22 contracted at any time after which it is determined
23 by the Secretary, in consultation with the manufac-
24 turer, that the doses will likely not be absorbed by
25 the private market.

1 “(b) CONTINGENCY PLAN.—The Secretary shall en-
 2 courage States to develop a contingency plan, in coordina-
 3 tion with the Department of Health and Human Services,
 4 for maximizing influenza immunization for high-risk popu-
 5 lations in the event of a delay or shortage of the influenza
 6 vaccine.

7 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated to carry out this section
 9 such sums as may be necessary.”.

10 **TITLE IV—PREPARING FOR A** 11 **PANDEMIC OR EPIDEMIC**

12 **SEC. 401. PREPARATION FOR INFLUENZA PANDEMIC OR** 13 **EPIDEMIC.**

14 Subtitle 3 of title XXI of the Public Health Service
 15 Act, as added by section 301, is amended by adding at
 16 the end the following:

17 “PREPARATION FOR INFLUENZA PANDEMIC OR EPIDEMIC

18 “SEC. 2142. (a) ESTABLISHMENT OF A PROTOCOL.—
 19 The Secretary, acting through the Director of the Na-
 20 tional Vaccine Program (referred to in this section as the
 21 ‘Director of the Program’), shall continue progress on the
 22 pandemic preparedness plan and, in consultation with the
 23 Director of the Centers for Disease Control and Preven-
 24 tion, establish a protocol to attempt to prevent, prepare
 25 for, and respond to an influenza pandemic or epidemic.

1 Such protocol shall be updated as determined appropriate
2 by the Director of the Program.

3 “(b) CONTENTS OF PROTOCOL.—The protocol estab-
4 lished under subsection (a) shall—

5 “(1) improve upon the current influenza vac-
6 cines and production and dissemination methods;
7 and

8 “(2) address—

9 “(A) methods to coordinate dissemination
10 of the influenza vaccine to key populations in
11 the event of an influenza pandemic or epidemic;

12 “(B) expansion of influenza vaccine manu-
13 facturing capacity (including making advance
14 arrangements for ensuring the availability of
15 raw materials) to respond to the needs of the
16 United States during an influenza pandemic or
17 epidemic;

18 “(C) alternative ways to manufacture or
19 produce the influenza vaccine;

20 “(D) alternative methods to prevent the
21 spread of, and complications associated with,
22 influenza, including antiviral medications;

23 “(E) vaccine manufacturing capacity, pro-
24 duction, and dissemination to improve pre-

1 paredness for immediate pandemic threats,
2 which may include avian influenza;

3 “(F) a tracking method for publicly and
4 privately sold doses of the influenza vaccine to
5 enable the Director of the Program to deter-
6 mine, after consultation with manufacturers of
7 the influenza vaccine, how much supply is in
8 circulation in the case of an influenza pandemic
9 or epidemic; and

10 “(G) other issues determined by the Direc-
11 tor of the Program to be appropriate.

12 “(c) COORDINATION; PREPARATION; PREVENTION.—
13 In establishing the protocol under subsection (a), the Di-
14 rector of the Program shall—

15 “(1) coordinate with health care providers,
16 manufacturers, research institutions, health care or-
17 ganizations, and other expert stakeholders;

18 “(2) continue building international and na-
19 tional surveillance capacity;

20 “(3) continue to engage in epidemiological stud-
21 ies and research on novel influenza viruses; and

22 “(4) assist States with preparedness activities
23 for a rapid State and local response to an influenza
24 pandemic, including exploring methods of making

1 the influenza vaccine more accessible to the general
2 population.

3 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 \$150,000,000 for each of fiscal years 2005 through
6 2009.”.

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